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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 325 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

P.M. MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR. A.Y. KOGJE , ADVOCATE FOR MR SV RAJU for Petitioner
Ms. B.R. GAJJAR, AGP, instructed by M/s. MG DOSHIT
& Co., Solicitor to Government for Respondent No. 1 & 2
Respondents Nos. 3 & 4 served.

CORAM : R.K.ABICHANDANI, J

Date of decision: 04/07/96

ORAL JUDGEMENT

The petitioner who was initially recruited as a clerk on 22.6.1965 in the office of the Collector, Ahmedabad, challenges the action of the respondents Nos. 1 and 2 in promoting the respondents Nos. 3 and 4 to the post of Deputy Mamlatdar by superseding the petitioner

and claims that he should be retrospectively promoted from 1.5.1979 as Deputy Mamlatdar. According to the petitioner he had passed the Revenue Sub-Service Departmental Examination as required by the Rules of 1971 at Annexure-B to the petition in the year 1974. As provided by Rule 4 of the said Rules a person who does not clear the said examination within the specified chances during the specified period is required to be discharged from service. The candidates who were recruited prior to the appointed date which means the date on which R.S.S.D.E. Rules, 1971 came into force i.e. 1.2.1971 were however not to be discharged but they were not eligible for confirmation and appearing at the Revenue Qualifying Examination for promotion to higher posts unless they passed the examination as provided by the Rules. Under Rule 5 of the said Rules, such a candidate is entitled to take the examination subsequently and on passing such examination he is made eligible for confirmation in the Lower Division of Subordinate Revenue Service and for appearing at the Revenue Qualifying Examination for promotion to the higher post. Under proviso to Rule 5 it is specifically laid down that such a person will not be entitled to claim seniority in the cadre of higher post over those persons who may have passed the examination earlier than him. From the list which is annexed at Annexure-A to the petition it would appear that the respondent No.3 had passed the said examination in May 1971 and the respondent No. 4 had passed the same in August 1971 while the petitioner had admittedly passed it in 1974 i.e much after these two persons. Therefore, as per the proviso to Rule 5 of the said Rules, the petitioner can never claim seniority in the higher post over those two respondents who had passed the examination earlier than the petitioner. Therefore, the claim of the petitioner for seniority over the respondents Nos. 3 and 4 in the higher post of Deputy Mamlatdar is wholly misconceived.

The other grievance of the petitioner is that he has not been considered for promotion merely on the ground that a departmental inquiry was pending against him. It is stated that on earlier occasion also twice chargesheets were issued but they were withdrawn and thereafter departmental inquiry was started on the basis of some past incident for which memo was given in the year 1979 and the inquiry was instituted only in 1982. The petitioner had challenged the Resolution dated 23.9.1981 of the Government laying down procedure required to be followed by the Departmental Promotion Committee in case of Government servant under suspension and those against whom inquiries are pending or are to be initiated. However, in view of the decision of the

Supreme Court in Union of India Vs. K.V. Jankiraman reported in AIR 1991 SC 2010 upholding similar instructions issued by the Government of India, the challenge against the impugned Resolution cannot be sustained and therefore the learned counsel submitted that the petitioner was not challenging the Resolution but now would rather rely on it. Relying on this Resolution, it was submitted that the procedure of sealed envelope has to be followed in its entirety and the Government cannot forget the employee after the initial stage of placing of the name in the sealed envelope by the Departmental Promotion Committee. The learned counsel appearing for the respondent Government has placed on record a letter dated 7.3.1983 addressed to the Solicitors in which there was an indication that the petitioner's case was to be placed before the Departmental Promotion Committee within three weeks of the said letter for being considered in consonance with the procedure laid down in the Resolution dated 23.9.1981. Beyond this, there is a total black out of information and neither the petitioner's counsel has any instruction in the matter nor is the Assistant Government Pleader informed in the matter as to what has happened. Unfortunately, the respondent Government has not cared to file any affidavit-in-reply in this matter. However, from the letter dated 7.3.1983 it does appear that the petitioner's case was considered by the Departmental Promotion Committee in accordance with the Resolution dated 23.9.1981 and the sealed envelope procedure has been followed. As provided in paragraph 3 of the Resolution if the Government servant concerned is completely exonerated, he should be promoted thereafter to the post filled on officiating basis and the arrangements made previously should be reversed. There is no indication as to what happened to the departmental inquiry and whether the the petitioner's case was considered in the light of the Resolution dated 23.9.1981. The inquiry which was pending in 1982 ought to have been completed long back. Under these circumstances, the respondents Nos. 1 and 2 are directed to immediately consider the petitioner's case as per the procedure laid down by the Resolution dated 23.9.1981 as may have been amended from time to time, if that is not done so far, and take a decision in the matter expeditiously by opening the sealed envelope, if not already opened. It does appear that the petitioner's case was to be considered for the post by the Departmental Selection Committee and the petitioner can have no right to anything beyond being considered for the post as per the Rules. Therefore, subject to the above directions, the petition is rejected. Rule is discharged

with no order as to costs.

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